IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.5 OF 2003

IN

NOTICE OF MOTION NO.1165 OF 2002

IN

SUIT NO.1332 OF 2002

...

Jagruti Mayur Bhatt ...Petitioner

v/s.

Mayur Manubhai Bhatt & ors. ...Respondents

...

Mr.D.C.Shah for the Petitioner.

Mr.P.K.Dhakephalkar i/b S.R.Bhalekar for the Respondents Nos.2 to 4, 6 to 11, 13, 14, 16, 18 to 21.

...

CORAM: D.K.DESHMUKH, J.

DATED: 21ST FEBRUARY,2007

P.C.:

1. By this contempt petition the Petitioner alleges that the Respondents have violated the order dated 26th April, 2002 made by this court. The order dated 26th April, 2002 was an ad-interim order. By that order ad-interim injunction in terms of prayer clause (a)(ii) was granted. Perusal of prayer clause a(ii) shows that by that order the Defendant, his agent, servants, creditors were restrained from dealing with, sealing or creating any third party rights in the flat C-305. According to the Petitioner the Respondent No.2, which is the Co.operative Bank has violated the order by putting the flat for sale.

2. The relevant fact is that the owner of the flat as per the record of the Co.operative Society in whose building the flat is situated is the Respondent No.1-Mayur, who admittedly is the husband of the Petitioner. He had mortgaged that flat to the Respondent No.2-Co.operative Bank and taken loan from that bank. As the loan was not repaid, the bank obtained recovery certificate against the Respondent

No.1 in July, 2001. The amount of recovery certificate, I have been informed, is in excess of Rs.2 crore. Obviously, the mortgage was created by the Respondent No.1 in favour of the Respondent No.2 bank much before 26th April, 2002 when the interim order was passed. As the flat was mortgaged to the bank, the bank has every right to proceed against that flat to recover its amount. Admittedly, at the time when the order of temporary injunction was made the Respondent No.2 bank was not a party to the suit. Therefore, the order of temporary injunction was not binding on the Respondent No.2. It is submitted that by prayer clause a(ii) not only the Defendant, but his creditors were also restrained from dealing with and disposing of the flat. The submission is without any substance. Civil court can make an order of injunction only against the persons who are parties to the suit. Civil court does not have the jurisdiction to make an order of injunction against the persons who are not parties to the suit. Therefore, though the prayer is widely worded the order of temporary injunction made by the court will operate only against the Defendant in the suit and not his creditors who may have independent rights. In any case, the look of the matter is that the

husband having taken money from the bank and mortgaged the property has set up his wife to frustrate the bank in recovering the loan amount. I do not find any element of any contempt involved. Petition disposed of. Petitioner is directed to pay costs of this petition to the Respondent No.2. Any ad-interim or interim order presently operating in this petition is vacated.

...